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*Pro Se* Petitioners

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

**IN RE:**  
**PETITION OF JENNIFER GRANICK AND**  
**RIANA PFEFFERKORN TO UNSEAL**  
**TECHNICAL-ASSISTANCE ORDERS AND**  
**MATERIALS**

MISC. CASE NO.: 16-mc-80206-KAW

**DECLARATION OF RIANA**  
**PFEFFERKORN IN SUPPORT OF**  
**MOTION TO UNSEAL DOCKET**  
**SHEETS AND PUBLICLY DOCKET**  
**COURT RECORDS**

1 I, Riana Pfefferkorn, declare as follows:

2 1. I am an attorney licensed to practice law before this Court. I am the Cryptography  
3 Fellow at the Center for Internet and Society at Stanford Law School (“CIS”), and am one of the  
4 *pro se* Petitioners in the above-captioned matter. The following facts are true to the best of my  
5 knowledge and belief and, if called and sworn as a witness, I could and would testify  
6 competently to them.

7 2. On September 16 and December 19, 2016, I spoke by telephone with Mr. Mark  
8 Jenkins, Deputy Clerk of this Court. During the September 16 call, I asked Mr. Jenkins some  
9 questions regarding how this Court keeps track of search warrants and surveillance applications  
10 and orders, such as wiretap or trap-and-trace orders. During the December 19 call, I asked Mr.  
11 Jenkins some follow-up questions relating to our prior conversation.

12 3. On information and belief based on those conversations, in this District, warrants  
13 and surveillance orders, and the government’s applications for them, are typically filed on paper,  
14 under seal, and are maintained in paper form in the Clerk’s office. These matters are  
15 electronically docketed in CM/ECF, but the docket sheets are sealed and are not available to the  
16 public on CM/ECF. The sealed files in these matters are rarely unsealed. When they are  
17 unsealed, the Clerk’s office makes them available to the public via in-person viewing at the  
18 Clerk’s office, but not via CM/ECF. There is some question about whether the Clerk’s office is  
19 able to honor requests to review unsealed surveillance materials, in-person or otherwise.

20 4. On information and belief, the paper records of matters involving warrants and  
21 surveillance orders are located in the courthouse for the division where the matter was initially  
22 filed.

23 5. On information and belief, this Court generally assigns the “criminal  
24 miscellaneous” (“xr”) case type to applications for warrants and surveillance orders.

25 6. On information and belief, this Court maintains the docket sheets of criminal-  
26 miscellaneous cases in CM/ECF, but those docket sheets are sealed as long as the underlying  
27 cases are sealed, and they not made accessible to the public unless the case is unsealed.  
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1           7.     On January 8, 2017, I used this District's CM/ECF system, located at  
2     ecf.cand.uscourts.gov, to generate reports of this District's criminal-miscellaneous cases by year.  
3     To generate these reports, I went to the "Reports" section in CM/ECF and clicked on the  
4     "Criminal Cases" link, which took me to the "Criminal Cases Report" screen. I selected the  
5     "criminal miscellaneous" case type, checked both "Pending" and "Disposed" under Count  
6     Status, selected both "Pending" and "Terminated" defendants, entered a date range of January 1  
7     through December 31 for each respective year for which I generated a report, left all other report  
8     options in their default settings, then clicked "Run Report."

9           8.     To count how many cases listed in each report are sealed, on the date I generated  
10    each respective report, I copied the report into a Microsoft Excel spreadsheet, and then used  
11    Excel's "find and replace" function to count the number of cases. I then subtracted that number  
12    (unsealed cases) from the total number, which the CM/ECF system displays at the end of the  
13    report, to arrive at the number of sealed cases.

14          9.     A total of 476 criminal-miscellaneous cases were recorded in CM/ECF for 2006.  
15    Of these, 454 (95.4%) were sealed as of the date I generated the report, January 8, 2017.

16          10.    A total of 576 criminal-miscellaneous cases were recorded in CM/ECF for 2007.  
17    Of these, 550 (95.5%) were sealed as of the date I generated the report, January 8, 2017.

18          11.    A total of 629 criminal-miscellaneous cases were recorded in CM/ECF for 2008.  
19    Of these, 600 (95.4%) were sealed as of the date I generated the report, January 8, 2017.

20          12.    A total of 857 criminal-miscellaneous cases were recorded in CM/ECF for 2009.  
21    Of these, 834 (97.3%) were sealed as of the date I generated the report, January 8, 2017.

22          13.    A total of 1033 criminal-miscellaneous cases were recorded in CM/ECF for 2010.  
23    Of these, 1004 (97.2%) were sealed as of the date I generated the report, January 8, 2017.

24          14.    A total of 1043 criminal-miscellaneous cases were recorded in CM/ECF for 2011.  
25    Of these, 973 (93.3%) were sealed as of the date I generated the report, January 8, 2017.

26          15.    For the foregoing six years' worth of reports, there were a grand total of 4614  
27    criminal-miscellaneous cases recorded in CM/ECF, of which 4415 (95.7%) were sealed as of  
28

1 January 8, 2017.

2 16. Attached as Exhibit A is a list of the criminal-miscellaneous cases in the  
3 aforementioned 2006 to 2011 annual reports that were unsealed as of January 10, 2017. I  
4 generated this report on January 10, 2017, by following the procedure described in Paragraph 9  
5 above, with a date range of January 1, 2006 through December 31, 2011. This yielded a 333-  
6 page report listing 4614 cases. I deleted 307 pages that listed only cases still under seal, but  
7 preserved the final such page, as it also shows the criteria I used in running the report.

8 17. When the records in surveillance matters are unsealed, they are not uniformly  
9 entered into CM/ECF. Sometimes the records are publicly available in CM/ECF after a  
10 Surveillance Matter is unsealed, and sometimes they are not.

11 18. Attached as Exhibit B is a true and correct copy of the docket sheet for Northern  
12 District case number 08-xr-90361, generated in CM/ECF on January 8, 2017. This is an example  
13 of a surveillance matter whose unsealed records are available in CM/ECF.

14 19. Attached as Exhibit C is a true and correct copy of the docket sheet for Northern  
15 District case number 11-xr-90242, generated in CM/ECF on January 10, 2017. This is another  
16 example of a surveillance matter whose unsealed records are available in CM/ECF.

17 20. Attached as Exhibit D is a true and correct copy of the docket sheet for Northern  
18 District case number 10-xr-91067, generated in CM/ECF on January 8, 2017. This is an example  
19 of a surveillance matter whose unsealed records are not available in CM/ECF, save for the  
20 Court's order unsealing the matter.

21 21. Attached as Exhibit E is a true and correct copy of the docket sheet for Northern  
22 District case number 11-xr-90409, generated in CM/ECF on January 10, 2017. This is another  
23 example of a surveillance matter whose unsealed records are not available in CM/ECF, save for  
24 the Court's order unsealing the matter.

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1           22. On January 11, 2017, my co-Petitioner Jennifer Granick and I called during  
2 business hours and left voicemail for Assistant U.S. Attorney Kirstin Ault notifying her that we  
3 would be filing the present motion.  
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5           I declare under penalty of perjury of the laws of the United States that the foregoing is  
6 true and correct. Executed at Palo Alto, California on January 12, 2017.  
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10 Riana Pfefferkorn  
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